A **UMI KHALSOM MOHAMED & ANOR**

v.

HALIZA HASSAN & ANOR

B HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED APANDI ALI J
[ORIGINATING SUMMONS NO: D10(D7)-24-516-2008]
10 JUNE 2009

C ***COMPANY LAW:*** *Shares - Rectification of register - Companies Act 1965, s. 162 - Whether plaintiff had right to ask for rectification - Plaintiffs' rights to shares - Whether lawfully given by Syariah Court - Administration of Islamic Law (Federal Territories) Act 1993, s. 46(2)(b)(iv) - Whether defendant could question validity of Syariah*
D *Court's order - Whether plaintiffs' application allowed*

The plaintiffs were the joint administrators of the estate of the deceased. On 3 May 2008, the Syariah Court granted an order, *inter alia*, that 15,000 units of shares in the second defendant -
E which were registered in the name of the first defendant - were the 'harta sepencarian' of the deceased and the first defendant. The Syariah Court ordered 2/3 (10,000 units) to be apportioned to the plaintiffs and 1/3 (5,000) units apportioned to the first defendant. Following the said order, the plaintiffs issued a notice
F dated 23 October 2008 to the second defendant requesting the company to rectify its register of members such that 10,000 units of shares in the second defendant be registered in the name of the plaintiffs and to issue a share certificate for 10,000 unit shares to the plaintiffs accordingly. The second defendant, however, failed to
G comply with the said request, thus precipitating this application by the plaintiffs pursuant to s. 162 of the Companies Act 1965 and according to O. 88 r. 3(1) of the Rules of the High Court 1980.

Held (allowing plaintiffs' application):

H **(1)** The plaintiffs had the right to ask for rectification pursuant to s. 162(1)(a) of the Companies Act. The plaintiff's rights to the shares was lawfully given by a court with competent jurisdiction under s. 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993. The defendant
I could not question the validity of the Syariah Court's order. (para 4)

Case(s) referred to:

Grant & Ors v. John Grant & Sons Pty Ltd & Ors [1950] 82 CLR 1 ***(refd)***

Latifah Mat Zin v. Rosmawati Sharibun & Anor [2007] 5 CLJ 253 FC ***(refd)***

Majlis Agama Islam Pulau Pinang lwn. Isa Abdul Rahman & Yang Lain [1992] 3 CLJ 1675; [1992] 1 CLJ (Rep) 201 ***(refd)***

Mohd Habibullah Mahmood v. Faridah Dato' Talib [1993] 1 CLJ 264 SC ***(refd)***

Nor Kursiah Baharuddin v. Shahril Lamin & Anor [1997] 1 CLJ Supp 599 HC ***(refd)***

Legislation referred to:

Administration of Islamic Law (Federal Territories) Act 1993, s. 46(2)(b)(iv)

Companies Act 1965, s. 162(1)(a)

Federal Constitution, art. 121(1A)

Rules of the High Court 1980, O. 88 r. 3(1)

For the plaintiffs - Pawancheek Marican; M/s Wan Merican, Hamzah & Shaik

For the defendants - Harpal Singh Grewal; M/s AJ Ariffin, Yeo & Harpal

Reported by Suhainah Wahiduddin

JUDGMENT

Mohamed Apandi Ali J:

[1] Enclosure 1 is the plaintiff's application by Originating Summons for the following relief, against the defendants, pursuant to s. 162 of the Companies Act 1965 and according to O. 88 r. 3(1) of the High Court 1980:

(1) that the 2nd defendant be ordered to rectify its register of members such that 15,000 units of shares in the 2nd defendant that are currently registered in the name of Haliza Binti Mohamed (the 1st defendant) be divided into 2 blocs, that is 10,000 units of the said shares are to be registered in the names of the plaintiffs jointly and 5,000 units of the said shares are to be registered in the name of the 1st defendant; and

(2) that the 2nd defendant be ordered to issue a certificate for 10,000 units of the said shares in the names of the plaintiffs jointly, and another certificate for 5,000 units of the said shares be issued in the name of the 1st defendant, within 14 days from the date of service of the order.

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Background Of Case

[2] The background of this application are as follows:

(1) The plaintiffs are the joint administrators of the Estate of MD Rosly Bin Abdul Manap (the deceased) by virtue of letters of administration granted to them on 26 October 2005 by the High Court of Kuala Lumpur.

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(2) On 3 May 2008, the Syariah Court granted an order, *inter alia*, that the 15,000 units of shares in the 2nd defendant - which are registered in the name of the 1st defendant - are the "harta sepencarian" of the deceased and the 1st defendant. The Syariah Court ordered 2/3 (10,000 units) is to be apportioned to the plaintiffs and 1/3 (5,000 units) is apportioned to the 1st defendant.

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(3) Following the said order of the Syariah Court, the plaintiffs through their solicitors issued a notice dated 23 October 2008 to the 2nd defendant requesting the company to rectify its register of members such that 10,000 units of shares in the 2nd defendant be registered in the name of the plaintiffs and to issue a share certificate for 10,000 units shares to the plaintiffs accordingly.

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(4) The 2nd defendants failed to comply with the said request, thus precipitating this application.

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Findings

[3] Upon perusal of the cause papers and the submissions filed herein, I made the following findings:

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(a) Section 162(1)(a) of the Companies Act. Section 162(1)(a) provides that:

> 162. Power of Court to rectify register.
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> (1) If:
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> (a) the name of any person is without sufficient cause entered in or omitted from the register; or
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> (b) default is made or unnecessary delay take place in entering in the register the fact of any person having ceased to be a member, the person aggrieved or any member or the company may apply to the Court for rectification of the register, and the Court may refuse

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the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

(b) Order 88 r. 3(1) of the Rules of High Court provides that an application under s. 162 of the Companies Act for the rectification of the register of members of a company may be made by Originating Summons or Originating Motion.

(c) Plaintiffs are seeking for the following relief against the defendants that the 2nd defendant be ordered to rectify its register of members such that 15,000 units of shares in the 2nd defendant be divided into 2 blocs, that is, 10,000 units of the said shares are to be registered in the names of the plaintiffs jointly and 5,000 units of the said shares are to be registered in the name of the 1st defendant, and that the 2nd defendant be ordered to issue a certificate for 10,000 units of the said shares in the names of the plaintiffs jointly, and another certificate for 5,000 units of the said shares be issued in the name of the 1st defendant.

(d) This application was made pursuant to the decision of the Syariah High Court by its judgment dated 3 March 2008 (exh. SFM3 encl. 2) which ordered that the 15,000 units of shares in the 2nd defendant are the "harta sepencarian" of the deceased and the 1st defendant of which 2/3 (10,000 units) is to be apportioned to the plaintiff and 1/3 (5,000 units) is apportioned to the 1st defendant.

(e) The order in exh. SFM3 encl. 2 was made by the Syariah Court under its jurisdiction under s. 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993. Section 46(2)(b)(iv) provides that:

46. Jurisdiction of Syariah High Court.

(2) A Syariah High Court shall:

b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to:

(iv) the division of, or claims to, harta sepencarian;

(f) Section 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993 has to be read together with art. 121(1A) of the Federal Constitution, which provides that the civil courts have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

(g) In respect to the property rights of Muslims (including Muslims rights over company shares), only the Syariah Court have the jurisdiction (refer to the case of *Latifah Mat Zin v. Rosmawati bt Sharibun & Anor* [2007] 5 CLJ 253 FC. There is a High Court decision on the point that the (civil) High Court cannot go behind the Syariah Court Order to the effect that it cannot be challenged by virtue of art. 121(1A) of the Federal Constitution, (refer to the case of *Nor Kursiah Baharuddin v. Shahril Lamin & Anor* [1997] 1 CLJ Supp 599 HC. I agree with the rationale of that High Court decision, in which the learned judge applied the reasonings in the Supreme Court cases of *Majlis Agama Islam Pulau Pinang lwn. Isa Abdul Rahman & Yang Lain* [1992] 3 CLJ 1675; [1992] 1 CLJ (Rep) 201 and *Mohd Habibullah Mahmood v. Faridah Dato' Talib* [1993] 1 CLJ 264 SC. Thus, the defendant cannot question the validity of the Syariah Court's Order.

(h) Reference is also made to the case of *Grant & Ors v. John Grant & Sons Pty Ltd & Ors* [1950] 82 CLR 1 where the court held that:

> The person claiming rectification must show that he has some equity which Court will protect.

In this case, the plaintiffs have shown that they have an equity in these shares *via* the Syariah Court's Order.

(i) The M & A of a company cannot supersede court orders made under valid law. Further, art. 6 of the 2nd defendant M & A (exh. A encl. 11) which provides that trusts are not to be recognized unless otherwise provided by the M & A or the law - "except only as by these articles otherwise provided by the M & A or the law."

Conclusion

[4] Based on the above findings I am of the opinion that the plaintiffs have the rights to ask for rectification pursuant to s. 162(1)(a) of the Companies Act. As explained above, the plaintiffs' rights to the shares was lawfully given by a court with competent jurisdiction under s. 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993.

[5] Therefore I conclude that that encl. 1 should be allowed with cost. Order given, as prayed, accordingly.